

# 2014 Legislative Update for Law Enforcement



COMMONWEALTH'S ATTORNEYS' SERVICES COUNCIL  
*Training Virginia's Prosecutors for the 21st Century*

More detailed information about individual bills (including the final text and legislative history) is available at the General Assembly website: <http://lis.virginia.gov>.

New laws are effective on July 1, 2014, unless otherwise noted.



# Investigations

# Magistrates; authorized to issue search warrants throughout Commonwealth

HB 138/SB 485

- Amends §§16.1-69.25 and 19.2-44.
- A magistrate may issue search warrants in accordance with Va. Code §19.2-52, *et seq.*, throughout the Commonwealth.
- Local law enforcement still must execute such search warrants.

# Warrant requirement for certain telecommunications records; real-time location data

HB 17

- Amends §19.2-70.3.
- Law enforcement must get a search warrant to “ping” a suspect’s phone to collect real-time location data.
- Exceptions:
  - To respond to user’s call for emergency services
  - With consent of the owner/user
  - With consent of legal guardian/next of kin if owner/user is missing

# Warrant requirement for certain telecommunications records; real-time location data (con't.)

HB 17

- Exceptions (con't.):
  - If law enforcement believes that there is an immediate danger to a person and there is insufficient time to get a warrant.
- Historic cell tower information can still be obtained by a §19.2-70.3 court order.

# Administrative subpoenas; human trafficking-related offenses

HB 485

- Amends §19.2-10.2.
- Adds abduction and prostitution as crimes for which CA's can issue administrative subpoenas for records from electronic communication and remote computing service providers.
- The CA must certify on the face of the subpoena that the records are relevant to a legitimate law enforcement investigation.

# **Multi-jurisdictional Grand Juries; numerous changes to laws governing**

**HB 56**

- Expands with whom information may be shared (chief LEO and sworn investigators).
- Clarifies that Special Counsel may issue subpoenas for records without requiring a custodian to appear.
- Clarifies the use of testimony for perjury charges and for impeachment purposes.
- Clarifies how, where, and how long records are to be maintained.
- Amends § §19.2-192, 19.2-215.1, 19.2-215.5, 19.2-215.6, 19.2-215.9.



# **Suspected child abuse or neglect; reports to law enforcement**

HB 405

- Amends §63.2-1503.
- Requires local social services to notify CA and law enforcement of suspected child abuse and neglect no more than 2 hours from receipt of complaint.
- Social services also must provide records related to the investigation of the complaint.

# Multidisciplinary teams; child sexual abuse

HB 334/SB 421

- Adds Virginia Code §15.2-1627.5.
- Requires CA's to establish local MDT's for cases of child sexual abuse and to conduct regular reviews.
- Mandatory members: CA, child abuse investigator, CPS and CAC's & ICAC's (if available).
- Optional members: school superintendents, local sexual assault crisis center, V/W director, health care professional.
- Upon request of member, MDT also can review cases of abuse & neglect.
- Effective date: July 1, 2015

# Seizure of property; human trafficking

HB 660

- Adds Virginia Code §19.2-386.35.
- Property used in connection with certain human trafficking-related offenses is subject to forfeiture.

# Seized drugs and paraphernalia; forfeiture to law enforcement

HB 186/SB 349

- When possession or title cannot be established, seized drugs and paraphernalia may be forfeited to law enforcement agencies.
  - Must be for training purposes.
  - Only by court order.
  - Limits on amounts retained.
  - Monthly inventories required.
  - Must be destroyed within 12 months.
- Amends § 19.2-386.23.



# Courts / Procedures / Evidence

# **Bond conditions; no contact provision**

SB 501

- Amends §19.2-123.
- Removes the 72 hour limit on the ‘no contact with household members’ bond condition that judicial officers may impose.

# Arraignment; conditional guilty plea in circuit court

HB 80

- Amends §19.2-254.
- Gives a defendant the right to enter a conditional guilty plea in a misdemeanor case in circuit court.

# Witnesses; right to nondisclosure of certain information

SB 640

- Amends §§19.2-11.2 and 19.2-267.
- Adds witnesses in serious gang & drug offense and violent felony trials to list of witnesses who may request to have their address, phone numbers and place of employment withheld.



# Prior sex offenses admissible; sex crimes against children

HB 403

- Adds Virginia Code §18.2-67.7:1.
- When a defendant is accused of a felony sexual crime against a child, evidence of defendant's previous convictions of sex offense(s) may be admissible if they are relevant.
- Rule of Evidence 2:403 still applies (weighing probative versus prejudicial value.)

# 911 calls as evidence; admissibility

HB 1248

- Amends §8.01-390.
- 911 calls are deemed authentic and admissible if accompanied by a certificate containing:
  - Custodian's authentication that it is a true copy,
  - Date and time of the call,
  - Incoming phone number associated with that call, if available.

# Certificates of Analysis; electronic signature

HB 518

- Amends §§18.2-268.7, 19.2-187 and 46.2-341.26:7.
- Allows DFS to scan blood withdrawal certificate and electronically submit it and the certificate of analysis to the clerk of court.
- Allows DFS to sign electronically certificates of analysis for drugs or alcohol.

# Rejection of plea agreement; recusal

HB 452

- Amends §19.2-254 and adds §16.1-277.2.
- If a judge rejects a plea agreement, she must immediately recuse herself from the proceeding unless the parties agree otherwise.

# Recording; misdemeanor trials in circuit court

HB 704

- Adds Virginia Code §17.1-128.1.
- Allows the defendant, the CA , or both, to record misdemeanor trials in circuit court.

# Crime victim's rights; offenses by juveniles

HB 171

- The victim of a delinquent act, that would have been a felony or specified misdemeanor if committed by an adult, can request notice of:
  1. Charge (s) brought;
  2. Findings of the court;
  3. Disposition of the case.
- Specified misdemeanors: A&B, stalking, violation of P/O, sexual battery or attempted sexual battery.
- Amends §§16.1-309.1 and 19.2-11.01.

# Crimes & Offenses

# Certain homicides; accessories after the fact

HB 976

- Amends §18.2-19.
- An accessory after the fact to a homicide punishable by death or as a Class 2 felony is guilty of a Class 6 felony.
- Currently punishable as a Class 1 misdemeanor.



# Sodomy, crimes against nature, penalty

SB 14

- Response to MacDonald v. Moose.
- Adds the words “anal intercourse, cunnilingus, fellatio and anilingus” to numerous Code sections to clarify what behaviors are prohibited.
- Clarifies sex crimes prohibited by crimes against nature statute.
- Bill was an emergency and was effective on passage.
- Amends §§18.2-67.5:1, 18.2-346, 18.2-348, 18.2-359, 18.2-361, 18.2-368, 18.2-370, 18.2-370.1, 18.2-371 and 18.2-374.3.

# **Sex offender registry; solicitation; pandering; minors**

HB 235/SB 454

- Amends §§ 9.1-902 and 18.2-355.
- Adds solicitation of minors and pandering of minors to sex offender registry requirements.
- Provides that a person engaged in pandering involving minors is guilty of a Class 4 felony.

# Sexual battery; touching person's intimate parts; penalty

HB 567

- Amends §18.2-67.4.
- A person is guilty of sexual battery if, within a two-year period, such person sexually abuses intentionally and without consent:
  - more than 1 victim; or
  - one victim more than once.
- Class 1 misdemeanor.

# Incest; definitions

SB 476

- Amends §18.2-366.
- Provides that term 'parent' includes step-parent, term 'grandparent' includes step-grandparent, term 'child' includes minor step-child and term 'grandchild' includes minor step-grandchild.

# Unlawful dissemination/sale of images of another; Class 1 misdemeanor

HB 326

- Amends §18.2-386.1 to include images created “by any means whatsoever.”
- Adds §18.2-386.2 which creates a Class 1 misdemeanor for maliciously disseminating or selling “revenge porn.”

# Assault & battery; family or household member; enhancement

HB 708

- Amends §18.2-57.2.
- Adds unlawful wounding (§18.2-51) and strangulation (§18.2-51.6) to list of offenses that can be used to enhance the penalty for A&B 3<sup>rd</sup> or subsequent within 20 years from Class 1 misdemeanor to Class 6 felony.

# **Assault & battery; school employees; penalty**

HB 851/SB 570

- Amends §18.2-57.
- Adds enhanced penalty for A&B against any full or part-time school employees engaged in their duties (not just teachers, principals, guidance counselors).
- Class 1 misdemeanor.
- Minimum of 15 days in jail, with at least 2 days to serve.

# Reckless handling of firearm; permanent physical impairment; penalty

HB 810/SB 65

- Amends §18.2-56.1.
- “Celebratory Gunfire” bill establishes that:
  - Handling a firearm in gross, wanton, culpable disregard of human life;
  - Resulting in permanent and significant physical impairment;
  - Is punishable as a Class 6 felony.



# Dextromethorphan Distribution Act

HB 505/SB 213

- Adds §§18.2 -265.19, 18.2-265.20, 18.2-265.21.
- No pharmacy or retailer can sell a dextromethorphan (cough suppressant) product to a minor (\$25 civil penalty.)
- No minor may knowingly & intentionally purchase such products (\$25 civil penalty.)
- Retailer must require proof of age.
- Distribution or PWID of unfinished dextromethorphan is a Class 1 misdemeanor.
- Effective date: January 1, 2015.

# **Cannabimimetic agents; regulation by Board of Pharmacy; penalties**

HB 1112/SB 594

- Substitutes the term “cannabimimetic agents” for “synthetic cannabinoids”.
- Places “cannabimimetic agents” on Schedule I.
- Subject to same penalties as other Schedule I.
  - Exception: Simple possession is a Class 1 misd.
- Allows Board of Pharmacy to expedite adding of substances to Schedule I or II or the list of cannabimimetic agents.

# Purchase of tobacco products by minors

HB 218/SB 96

- Amends §18.2-371.2.
- Adds nicotine vapor products and alternative nicotine products to list of tobacco products that cannot be sold to, or possessed by, minors.
- Targeted at electronic cigarettes.
- Provides definitions of ‘nicotine vapor products’ and ‘alternative nicotine products’.

# Cigarette laws; administration and enforcement, etc.

HB 853/SB 285, SB 352, SB 364, SB 365, SB 366, SB 478, SB 489

- Provides, in part, that:
  - Violations can be investigated by multijurisdictional grand jury.
  - Counterfeit or unstamped cigarettes may be assigned by the court for use by law enforcement undercover investigations.
  - Person convicted no longer eligible to be an authorized dealer.
  - Sealed, labeled packaging is prima facie evidence that it is a pack of cigarettes.

# Cigarette laws; administration and enforcement, etc. (con't.)

HB 853

- Penalties are graduated based on the number of offenses.
- Amends §§ 19.2-215.1, 19.2-386.21, 58.1-1000, 58.1-1012, 58.2-1017.1.
- Adds §58.1-1017.2.

# DUI; probation; license suspension, etc.

SB 482

- Removes provision that a defendant convicted of 4<sup>th</sup> or subseq. DUI/10 years shall be on probation and under suspended sentence for the same period as his O/L was suspended, not to exceed 3 years.
- Provides that suspension can occur for refusal to submit to breath test or blood test.
- Clarifies that VASAP is required for all convictions under § 18.2-266.

# DUI; probation; license suspension, etc. (con't.)

SB 482

- Fixes two incorrect cross-references.
- Corrects an omission regarding administrative suspension of licenses for failure to order ignition interlock.
- Amends §§18.2-270, 18.2-270.1; 46.2-391.01 and 46.2-391.2.

# Wearing masks in public; exceptions; penalty

HB 542

- Amends §18.2-422.
- Adds intent element to the offense.
- Must prove wearer had intent to conceal his identity.
  - Exception for children younger than 16.
- Class 6 felony.



# Automated sales suppression devices; penalty

SB 611

- Amends §§ 58.1-1841 and 58.1-3907.
- An automated sales suppression device is an electronic means of falsifying cash register and point-of-sale records.
- Makes it a Class 1 misdemeanor to use such a device.
- Offender also subject to \$20,000 civil penalty.

# Bicycles, etc.; minimum clearance for passing

SB 97

- Amends § 46.2-839.
- Increases from 2 to 3 feet the minimum clearance necessary between a passing vehicle and:
  - Bicycles;
  - Electric personal mobility device;
  - Electric power-assisted bicycle;
  - Moped;
  - Animal;
  - Animal-drawn vehicle.

# Punishment/Consequences

# Commitment to DJJ; social history

HB 183/SB 128

- Unless waived by agreement with CA, a judge must consider a social history before committing a juvenile to DJJ.
- Currently, a social history can be completed up to 15 days after commitment.
- Amends §§ 16.1-272, 16.1-273, 16.1-278.7, 16.1-278.8.

# Fraudulent conversion or removal of leased property; restitution

HB 159

- Amends §18.2-118.
- Requires a court to order a person found guilty of fraudulent conversion of leased property to make restitution.
- Restitution may include:
  - Cost of repair;
  - Actual value, if damage irreparable; and
  - Any reasonable loss of revenue.

# Post-Trial Issues

# **Criminal Injuries Compensation Fund (CICF); filing of claims**

HB 885/SB 186

- Allows CICF to extend time for filing claims based upon newly discovered evidence.
- Applies to crimes committed between July 1, 1977, and July 1, 2001.
- Amends §§19.2-368.5, 19.2-368.9, 19.2-368.11.

# Name changes: sex offenders, probationers, inmates

HB 233

- Amends §8.01-217.
- Court is required to send such name change applications to CA and to conduct a hearing.
- Court may order a name change if it finds:
  - It would not frustrate a legitimate law enforcement purpose,
  - It is not sought for fraudulent purpose, and
  - It would not infringe on rights of others.
- A non-complying order is invalid.



# **Sex offenders; registration; name change**

HB 1251

- Amends §§ 9.1-903 and 9.1-908.
- Sex offenders must re-register within 3 days following a name change.
- Those incarcerated or civilly committed must notify the sex offender registry within 3 days of name change.
- Registry information must include former name.

# Protective Orders

# Emergency protective orders; arrests for DV, etc.; definition of LEO

HB 285/SB 71

- Amends §§ 16.1-253.4 and 19.2-81.3.
- Adds qualified conservators of the peace to definition of LEO's who can:
  - Make arrests for A&B on a family or household member, stalking and violations of a protective order.
  - Obtain an emergency protective order.

# Protective Orders; companion animals

HB 972

- Allows court to award petitioner custody of companion animals.
- Amends §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9 and 19.2-152.10.

# Protective Orders; motor vehicle maintenance

HB 335/SB 151

- Amends §16.1-279.1.
- When court grants petitioner possession or use of vehicle, court can direct respondent to maintain insurance, registration and taxes.



# Mental Health

# 2014 Virginia Civil Commitment Code Changes

HB293/HB323/HB478/HB1172/SB260/SB439

- Amends §§ 16.1-340, 16.1-340.1, 16.1-345.4, 19.2-169.6, 19.2-182.9, 37.2-808, 37.2-809, 37.2-810, 37.2-814, 37.2-817.2.
- Adds §§ 16.1-340.1:1, 37.2-808.1, 37.2-809.1.
- Incorporate or identical to HB 234, HB 574, SB 200, SB 263, SB 370, SB 458.
- Mental Health Task Force to study impact on law enforcement and make recommendations to reduce burden on law enforcement resources.

# Emergency custody

HB 478/SB 260

- ECO valid for a period not to exceed 8 hours from the time of execution.
  - No extension required to reach 8 hour period.
  - 8 hour period applies to both paper and “paperless” ECO’s
    - *Old law: 4 hour period with possible 2 hour extension*
  - 8 hours to execute an ECO from the time of issuance
    - *Old law: 6 hours to execute*



# Emergency custody

## SB 260

- At the end of the 8 hour period...
- *If:*
  - The individual is detained in a state facility because a temporary detention facility could not be identified (state facility used as a “facility of last resort”),
- *Then:*
  - The CSB and the state facility may continue for 4 additional hours to i.d. an alternative facility (TDO already issued.)
  - This provision expires June 30, 2018.

# Emergency custody; notification of CSB

HB 478/SB 260

- Requires LEO to notify CSB as soon as practicable when minor/adult taken into emergency custody or the ECO is executed.
  - Applies to both paper and “paperless” ECO’s.

# Emergency custody; notification of rights

HB 478/SB 260

- Any person taken into emergency custody shall be given a written summary of procedures and statutory protections.
  - Supreme Court form DC4050.
  - Statute silent on who has this responsibility – locality needs to determine procedure.
  - Forms available from Virginia Supreme Court website on July 1, 2014.
  - General District Court Clerks will have limited copies of this form.

# Determining Temporary Detention Facility

HB 293/SB 260

- Upon receiving notification of the need for an evaluation, the CSB shall contact the State facility serving the area in which the CSB is located and notify it that the individual will be transported to it upon the issuance of a TDO if an alternative facility cannot be identified by the expiration of the 8 hour emergency custody order.
- Upon completion of the evaluation, the CSB shall provide information about the individual to the State facility to allow it to determine the services the individual will require on admission.

# Determining temporary detention facility

HB 293/SB 260

- Once notified, the State facility may conduct a search for an alternative facility
  - May contact another state facility if it is unable to provide temporary detention and appropriate care
- If State finds an alternative facility, it shall notify the CSB and the CSB shall designate the alternative facility on the preadmission screening report.

# Determining temporary detention facility; role of state facilities

HB 293/SB 260

- A State facility shall not fail or refuse to admit an individual who meets the criteria for TDO unless an alternative facility agrees to accept the individual.
- If a facility of temporary detention cannot be identified by the expiration of the 8-hour emergency custody period, the individual shall be detained in the State facility.
  - State facility = facility of last resort.
- An individual who meets the criteria for TDO shall not be released.
  - Custody potential problematic issue.

# Temporary detention; change of facility

HB 1172

- Amends §§ 37.2-809 and 37.2-810.
- CSB may change the facility of TDO and may designate an alternative facility at any point during the period of temporary detention.
  - Must determine alternative facility is a more appropriate facility given the specific security, medical, or behavioral needs of the person.
  - CSB must provide written notice to the clerk of the name and address of the alternative facility.

# Temporary detention; change of facility; transportation

HB 1172

- If the facility of temporary detention is changed transportation is provided in accordance with 37.2-810.
  - If law enforcement or an alternative transportation provider has custody of the person when the change is made, individual shall be transported to the alternative facility.
  - If individual has been transported to initial TDO facility, CSB will request the magistrate to enter an order specifying an alternative transportation provider, or if no alternative transportation provider, the local law enforcement agency where the person resides or is located if 50 mile rule is applicable.



# Temporary detention; transportation

HB 1172

- In determining the primary law enforcement agency to provide transportation, the magistrate shall specify in the TDO the law enforcement agency of the jurisdiction where the person resides or any other willing law enforcement agency that has agreed to provide transportation
  - Provides for active collaboration among law enforcement agencies

# Temporary detention; notification of rights

HB 478/SB 260

- Any person detained shall be given a written summary of procedures and statutory protections.
  - Supreme Court form DC4050.
  - Statute silent on who has this responsibility – locality needs to determine procedure.
  - Forms available from Virginia Supreme Court website on July 1, 2014.
  - General District Court Clerks will have limited copies of this form.

# Temporary detention; commitment hearing

HB 574/SB 260

- Commitment hearing shall be held within 72 hours of the execution of the TDO
- If the 72-hour period ends on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, person may be detained until COB on the next business day when the court is open
  - *Old Law: 48 hours*

# Commitment hearing

HB 574/SB 260/SB 439

- When the judge informs the individual of his right to apply for voluntary admission and advises him that if he chooses to be voluntarily admitted he will be prohibited from possessing or purchasing a gun, the judge must now advise the individual that he will also be prohibited from transporting a gun.
  - Consistent with 18.2-308.1:3.

# Mental health; prohibition of firearms

HB 743/SB 576

- The following documents must be filed in the clerk's office where hearings are held by COB the following day:
  - Commitment orders or certifications of voluntary commitment.
  - Court findings in guardianship/conservator cases.
- Requires clerk to certify and forward to CCRE certain orders by COB the next day. The current requirement is “forthwith.”
- Amends §§ 37.2-819 and 64.2-2014.

# Minors

HB 478/SB 260

- ECO period increased to 8 hours (was 4)
  - Provision for extension removed
  - 8 hours to execute an ECO (was 6)
  - TDO period unchanged for minors (96 hours)
- Law enforcement agency that executes the ECO shall notify the CSB responsible for conducting the evaluation as soon as practicable after taking the person into custody.
  - Applies to paper and “paperless” ECOs.

# Minors

## HB 293/SB 260

- Provisions for determining the facility of temporary detention are same as for adults.
  - State facility if an alternative facility is not identified before expiration of the ECO.
- If detention in a state facility occurs at expiration of 8 hour period because another facility could not be identified, CSB and the state facility may continue to identify an alternative for an additional 4 hours.
  - Expires June 30, 2018.
  - HB1172 only applicable to adults.

# Psychiatric bed registry

SB 260/SB 439

- Establishes acute psychiatric bed registry with real time information on bed availability.
- Bed registry shall:
  - Include descriptive information for each inpatient psychiatric facility, residential crisis stabilization unit, including contact information
  - Provide real-time information about the number of beds available and for each bed:
    - The type of patient that may be admitted
    - Level of security provided
    - Any other information to allow identification of appropriate facilities for temporary detention



# Miscellaneous

# Human trafficking; DCJS model policy

SB 654

- Amends §9.1-102.
- Requires DCJS to publish and disseminate a human trafficking model policy for law enforcement.
- Must be designed to ensure that investigators and patrol officers are sensitive to and aware of human trafficking offenses and the identification of victims.

# College police & security depts.; DCJS to identify core operational functions

HB 587/SB 440

- DCJS is required to conduct a study to identify potential minimum core operational functions for college campus police and security departments.
- DCJS also shall determine costs of compliance and legislative amendments necessary to require compliance.

# Central station dispatchers; exempt from training if station has certification

SB 85

- Adds § 9.1-140.01.
- Central station dispatchers at central stations certified by a Nationally Recognized Testing Laboratory are exempt from training requirements established by DCJS.

# PERKS; inventory by DFS

SB 658

- Requires state and local law enforcement to report inventory of untested PERKS to DFS.
- DFS must submit report of inventories to the General Assembly prior to 2015 session.
- Requirement conditional on funding.

# **Interjurisdictional law enforcement agreements; loan of unmarked units**

**HB 872**

- Amends § 15.2-1726.
- Interjurisdictional law enforcement agreements may allow for the loan of unmarked police vehicles.

# **Regional Criminal Justice Academy Training Fund; local fee**

**HB 1049/SB 597**

- Amends § 9.1-106.
- Changes the date by which a locality must have been operating a certified independent criminal justice academy from 7/1/2010, to 7/1/2012, to allow certain localities to charge a fee for operating their criminal justice academies.

# Concealed handgun permits

HB 100

- Amends §§18.2-308.02 and 18.2-308.011.
- Any references to issuance of concealed handgun permit in any order book before 7/1/2008 are exempt from requirement that such orders be withheld from public disclosure.
- Requires circuit court clerks to issue replacement concealed handgun permits to permit holders undergoing lawful name change.



# Inspection stickers; increases grace period for members of armed forces

HB 411/SB 138

- Amends § 46.2-1158.1.
- Increases grace period for vehicle safety inspections from 5 business days to 14 calendar days.
  - Applies only to members of the armed forces who are on active duty.



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